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HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, C.J.

WRIT PETITION NO. 2318 OF 1995.

PETITIONERS

1. Ram Avtar, S/o. Munshi Ram Sharma, Occupation Cultivation, R/o. Village Gharghoda District Raigarh.
2. Kirodimal Sharma, S/o. MUnshiram Sharma, aged about 42 years, occupation cultivation, R/o. Village Gharghoda District Raigarh.
3. Hetram Sharma S/o. Munshi Ram Sharma, Occupation Cultivation, R/o. Village Gharghoda District Raigarh.
4. Dwarka Prasad Sharma, S/o. Munshi Ram Sharma, Occupation Cultivation, R/o. Village Gharghoda District Raigarh.
5. Ayodhya Prasad Sharma S/o. Munshi Ram Sharma, Occupation Cultivation, R/o. Village Gharghoda District Raigarh (MP).

Vs.

RESPONDENTS

1. Board of Revenue, Gwalior.
2. Commissioner (Revenue), Bilaspur Division, Bilaspur.
3. Mst. Rusobai widow of Ghosh
4. Parvati D/o Mahanand.
5. Ravi S/o Mahanand.
6. Dandaram S/o Mahanand.
7. Sukanti D/o Ghosh.
8. Kanti D/o Ghosh.
9. Gokul S/o Ghosh.
10. MOngra S/o Ghosh.
11. Mahanand S/o Karan.

Sl. No. 3 to 11 all resident of Gharghoda tahsil Gharghoda district Raigarh (MP).

Present : Shri V.R. Tiwari, learned counsel for the petitioners.
Shri Vinay Harit, learned Dy. A.G. for respondent NO.2.

ORAL ORDER
(Passed on 8th November, 2006)

Failure to exercise the discretion vested in the Commissioner and Board of Revenue fairly in the facts and circumstance of the case had led to stalling of the adjudicatory proceedings for a long period of 13 years and more.

(2) The Appeal preferred by the petitioners herein against the order of the Collector, Raigarh under Section 170-B of the Chhattisgarh Land Revenue Code, 1959, (for short 'the Code') was listed for hearing on 28.09.1993. The Counsel who was appearing on behalf of the petitioners having noted the date of hearing as 29.09.1993 wrongly, did not appear before the Commissioner on 28.09.1993 which was the correct date of hearing. Consequently, the Commissioner dismissed the appeal for non-prosecution on 28.09.1993. The counsel for the appellant-petitioners on 29.09.1993 having come to know that the Commissioner had dismissed the appeal on 28.09.1993, moved an application before the Commissioner to set aside the Order made by him on 28.09.1993 and restore the appeal to the file of the Commissioner. The Commissioner dismissed the said application of the petitioners-appellants. Feeling aggrieved by that order of the Commissioner, the petitioners preferred further appeal under Section 35(4) of the Code to the Board of Revenue, and the Board of Revenue also dismissed the appeal by its order dated 02.05.1995. Hence, this writ petition.

(3) It is stated that in the affidavit filed in support of the application, learned counsel for the petitioner has stated that he had wrongly noted the date of hearing as 29.09.1993 instead of noting down the correct date as 28.09.1993. It is not as if there was any considerable

delay in moving the application for restoration of the appeal. The application was moved the very next day by the learned counsel. Therefore, the Commissioner as well as the Board of Revenue in fairness, ought to have allowed the application and restored the appeal to the file of the Commissioner and decided the appeal on merit. In that view of the matter, I allow the writ petition and set aside the impugned order and remand the proceedings to the Board of Revenue, Chhattisgarh State, Bilaspur with a direction to dispose of the proceedings on merits after giving reasonable opportunities to the concerned as expeditiously as possible, in any event, within a period of six months from the date of receipt of a copy of this order.

Sd/-
Chief Justice

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